

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 225 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

MANILAL MANGALBHAI RAJPUT

Versus

COMMISSIONER OF POLICE, VADODARA.

Appearance:

MR SATISH R PATEL for Petitioner

AGP MR SAMIR DAVE for respondent Nos. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 28/09/1999

ORAL JUDGEMENT

1. Heard Learned Advocate Mr. S.R. Patel for the
petitioner and Learned A.G.P. Mr. Samir Dave for the
respondent Nos. 1 to 3.

2. The detention order dtd, 12/12/98 passed by the
respondent No. 1 - Commissioner of Police, Vadodara
City, Vadodara, against the petitioner-detenu in exercise
of powers conferred vide Sec. 3 (1) of Gujarat

Prevention of Anti-social Activities Act, 1985 (PASA for short) is challenged in the present petition under Article 226 of the Constitution of India.

3. The grounds of detention supplied to the petitioner under Sec. 9 (1) of PASA, copy of which is produced at Annexure - C at page 15 of compilation, indicate that four criminal cases in respect to offences made punishable under Bombay Prohibition Act, 1949, were filed against the petitioner-detenu at Chhani Police Station and Kareli-baug Police Station. That the case arising from C.R. NO. 200/98 is pending for investigation, while other three cases are pending for trial. Furthermore, it indicates that three witnesses on assurance of anonymity have supplied information about the anti-social activity of the petitioner to the authority. That on the basis of the said material, respondent NO. 1 - Commissioner of Police, Vadodara has concluded that the petitioner is a "bootlegger", within the meaning of Sec. 2 (b) of PASA. That resort to general provisions of law are insufficient to prevent the petitioner from continuing his anti-social activities and as such the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been submitted that the documents supplied with the grounds of detention to the petitioner contain statements of anonymous witnesses also. That statement of witness recorded on 27/11/98, wherein incident of 12/10/98 as has been stated by the witness to Police Inspector, Kareli-baug Police Station, has been elaborated. That the detaining authority has construed the said statement alongwith the other material, while formulating the grounds for detention and as stated in the grounds of detention, has claimed privilege for the said witness, as provided under Sec. 9 (2) of PASA. However, the copy of the statement supplied to the petitioner discloses that the the statement which was recorded by the Police Inspector, Kareli-baug Police Station, has not been verified either by the respondent NO. 1 Commissioner of Police, Vadodara or by any Sub-ordinate Officer at the instance of respondent No. 1. Under the circumstances, the privilege claimed by the detaining authority in respect to the said witness, cannot be said to be a genuine and consideration of such statement for formulating the ground of detention discloses non-application of mind on the part of the authority. To support this submission, reliance is placed on the judgement delivered on 27/9/99 by this Court in the matter of Zardullakhan alias Mehtabkhan Pathan Vs. State of Gujarat and Ors., in SCA 639/99.

5. Learned A.G.P. Mr. Samir Dave has fairly stated at bar that on scrutiny of file, it appears that inadvertently verification of said witness seems to have not been made by the authority before considering the same for formulation of the grounds of detention.

6. The abovestated discussion discloses that the consideration of material without due verification by the detaining authority and claiming privilege under Sec. 9 (2) of PASA discloses non-application of mind on the part of the respondent NO. 1, which has vitiated the subjective satisfaction and has rendered the impugned order invalid, and as such the petition deserves to be allowed.

7. On the basis of aforesaid discussions, the petition is allowed. The impugned order dtd. 12/12/98 passed by the respondent No. 1 - Commissioner of Police, Vadodara City, Vadodara against the petitioner-detenu is hereby quashed and set aside. The petitioner-detenu namely Manilal Mangalbhai Rajput is ordered to be set at liberty forth, if not required in any other case.

Rule to that extent made absolute.

Rafik*